

DRAFT, 10/04/04, includes 10/01 feedback from Cliff, and 10/4/04 feedback from Carolyn Yale and Tom Hagler

10/5/04 Decision made by Enrique Manzanilla, Lisa Hanf, Tom Hagler to not pursue development and approval of this letter through FAO/HQ FAO. FAO will refocus review on to DEIS Sacramento River Settlement Contractors Long-Term Contract Renewals, DEA Delta-Mendota Contract Renewals and upcoming EISs. WTR may still finalize this letter and send it out from Water Division.

October 8, 2004

Kirk Rodgers  
Regional Director  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, California 95825

**SUBJECT:** Proposed Long-Term Contract Renewals and Related Environmental Assessments

Dear Mr. Rodgers:

This letter is in response to the U.S. Bureau of Reclamation's (Reclamation's) recent release of Environmental Assessments (EAs) evaluating the impacts of long-term water supply contract renewals in the Central Valley Project (CVP) service area. EPA's comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

Including the 5 EAs that we recently received (Sacramento River Division, Feather Water District, Shasta and Trinity River Divisions, City of Fresno, and City of Lindsay), a total of 13 contract renewal documents are scheduled to be released. Draft Environmental Impact Statements (EISs) are being completed for the renewal of water supply contracts in the American River Division, the San Luis Unit, and for the Sacramento River Settlement Contractors. Cumulatively, Reclamation proposes to renew 246 long-term contracts, committing almost five million acre feet of California's water, for minimum periods of 25 to 40 years. This amounts to over 20 percent of California's developed water supplies.

EPA is concerned that Reclamation is completing contract renewals without resolving significant system-wide and regional impacts. EPA expressed our concerns with the Bureau's approach to long-term CVP contract renewals and their effects of continued diversions and deliveries since 1989 when we referred the Friant Unit CVP contract renewals to the President's Council on Environmental Quality because Reclamation proposed renewing these contracts without environmental review pursuant to NEPA. Over the past 15 years, EPA has urged Reclamation to undertake a rigorous analysis of alternatives and reduce environmental impacts,

while meeting the purposes of Reclamation law and the Central Valley Project Improvement Act (CVPIA).

The CVPIA mandated substantive changes to contracting and the management of water supply for environmental purposes. EPA continues to support the objectives of the CVPIA. EPA has also joined Reclamation and other state and federal agencies in the CALFED process to collectively implement a comprehensive and balanced program for environmental restoration, water supply reliability, water quality, and levee improvement.

In addition to the contract renewal NEPA documents, Reclamation has released the negotiated draft contracts for public review and the Long-Term Central Valley Operations Criteria and Plan (OCAP). The OCAP describes project-wide operations for contract water delivery and is being used as the basis for Endangered Species Act consultations needed to support the contract renewals. The OCAP provides a more current analysis of system-wide CVP operations than the Programmatic EIS (PEIS) on the CVPIA, which is the NEPA analysis from which the contract renewals are tiered. Collectively these documents-- the recently released EAs, the CVPIA PEIS, draft OCAP, and draft contracts -- raise questions regarding key contract terms, alternatives, and the overall environmental review process for all proposed long-term contract renewals. These questions fall into two categories - NEPA compliance and impacts to water resources. Our detailed comments regarding these questions are enclosed.

EPA is providing these comments in the spirit of interagency coordination, and respectfully requests that Reclamation use an expanded NEPA process to inform decisions regarding contract terms. We look forward to working with Reclamation during the complex evaluation of long-term CVP contract renewals. Thank you for your consideration of the important environmental and procedural issues we have raised. If you have questions about our comments, please have your staff contact Laura Fujii at (415) 972-3852 or [fujii.laura@epa.gov](mailto:fujii.laura@epa.gov).

Sincerely,

Enrique Manzanilla, Director  
Cross Media Division

Enclosure:  
EPA's Detailed Comments

**EPA DETAILED COMMENTS ON CENTRAL VALLEY PROJECT LONG-TERM CONTRACT  
RENEWAL EAS, OCTOBER 08, 2004**

**NEPA Compliance**

Based on information currently available, EPA is concerned that Reclamation's NEPA process for contract renewals does not address the full scope of direct, indirect, and cumulative impacts of these decisions, and has provided limited time for informed public involvement.

We continue to believe that contract renewals, which have been grouped and evaluated at the division level, or at a similar scale, should be analyzed through EISs rather than EAs where there are significant environmental impacts and policy issues that should be fully disclosed. For instance, Reclamation appropriately plans to issue EISs on contract renewals for the American River Division, the San Luis Unit, and the Sacramento River Settlement Contractors. These contracts raise significant water quality and quantity issues and may have significant environmental impacts on the aquatic ecosystem. However, other comparable contract renewal decisions, such as those for the Delta Mendota Canal and Sacramento River Division, are being evaluated with EAs. A consistent standard for determining the appropriate level of environmental review for each set of division-level contracts should be applied by Reclamation.

EPA does not agree that EAs are justified by "tiering" to the CVPIA Programmatic EIS. To properly "tier" from a programmatic document, the EAs should provide the site-specific environmental analyses omitted in the programmatic document. Although the CVPIA Programmatic EIS broadly evaluated the environmental impacts of implementation of the CVPIA throughout California, the PEIS did not analyze the environmental impacts of contract water delivery and use at the division level. Surface and groundwater quality and specific fisheries conditions were also not addressed comprehensively in the PEIS.

Based upon our review of the 5 released long-term contract renewal EAs, water quality and fisheries impacts of delivery and use of contract water at the site-specific level have not been fully addressed. Water quality impacts are well-documented impairments in Central Valley streams which serve as sources and conduits of CVP contract supplies. In addition, the Sacramento River Division EA cites findings from the OCAP and Biological Assessment on significant fisheries impacts but does not analyze these impacts, or identify potential remedies.<sup>1</sup> Given potential significant impacts to water quality, fisheries and the aquatic ecosystem, an EIS level of NEPA evaluation would have been more appropriate.

The brief public review period afforded by the EAs, and the fact that important

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<sup>1</sup> See Sacramento River Division EA, pp. ES-6 and 7 on impacts. The information summarized in the Sacramento River Division EA, when combined with the information included by Reclamation in its Biological Assessment for the OCAP (June 30, 2004), suggests that continued project deliveries in the Sacramento River service area can have significant impacts on migratory fish due to water diversion structures and limited availability of cold water habitat.

environmental information is contained in the OCAP Biological Assessment and yet-to-be completed Endangered Species Act consultations on CVP operations, limits informed public review and comment. Given the scale and importance of the long-term contract commitments, we are concerned that the documents providing essential information on the proposed actions--the negotiated contracts themselves, the environmental reviews, the OCAP and Biological Assessment, and consultations pursuant to the Endangered Species Act--are not coordinated to allow sufficient agency and public review. Development of EISs incorporating key environmental information at the division level would help inform the Bureau's decision-making process, as well as support full public disclosure consistent with the goals of NEPA.

### **Impacts to Water Resources**

EPA has previously stated our concerns with the water quantities in long-term renewal contracts.<sup>2</sup> Based on information in the CVPIA Programmatic EIS and OCAP, we are concerned that Reclamation will renew contracts for quantities in excess of the water available under most hydrological conditions. Reclamation's own analysis suggests that the shortfall--the difference between the contract quantity and the amount of water actually available--will increase during the term of these renewed contracts.<sup>3</sup> The delivery of contract quantities could exacerbate the challenge of providing contract deliveries and operating the CVP for ecosystem flows.

Environmental problems associated with water diversions and over allocations, such as altered flows and degraded water quality, are well documented through the CALFED Bay-Delta Program and work of the State Water Resources Control Board and Central Valley Regional Water Quality Control Board.<sup>4</sup> Based upon our review of the released EAs and OCAP Biological Assessment, water quality and fisheries impacts at the division level are not sufficiently addressed. Proposed long-term contracts that commit water quantities which exceed reliably available supplies and continue to provide water at subsidized rates reduce opportunities to address impacts to water quality, fisheries, and aquatic ecosystems and balance environmental and user needs.

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<sup>2</sup> For example, see letter from Deanna Wieman, EPA, to Al Candlish and Bill Luce, Reclamation, December 8, 2000.

<sup>3</sup> See Central Valley Project Improvement Act Programmatic EIS, Chapters II and IV, and related appendices; OCAP, pp. 6 -28 and 29.

<sup>4</sup> The CALFED Bay-Delta Science Program and Ecosystem Restoration Program have generated substantial information on river restoration. See, for example, "CALFED Science in Action: Reviving Central Valley Rivers," June 2003. Pursuant to Clean Water Act Section 303(d), the State Water Resources Control Board has listed many Central Valley waterways as "impaired" with irrigated agricultural pollution sources. Priority Total Maximum Daily Loads (TMDLs) have been adopted or are under development for selenium, salts and boron (San Joaquin basin), and pesticides (Central Valley). In conjunction with the various TMDLs, the Central Valley Regional Water Quality Control Board is developing a program to remedy significant water quality impairments in the Sacramento and San Joaquin valleys through an irrigated lands waiver program.

In combination with water rates which are unlikely to repay the full cost of CVP investment in the near future, this overcommitment of CVP water supplies has additional consequences for efficient water management. First, Reclamation's approach is inconsistent with the "beneficiary pays" concept adopted in the CALFED Bay Delta Program Record of Decision. As it becomes more difficult to deliver contract quantities with the existing water supply and delivery system, water users will look to the CALFED effort to increase CVP water supplies through storage and conveyance improvements. However, the CALFED Program has embraced the principle that the beneficiaries of water projects should bear the costs of construction and operation. By executing these long-term contract renewals with current contract quantities and conditions, the contracts will provide subsidized water rates, thereby not addressing the beneficiary pays concept. Without strengthening incentives for water users to manage water efficiently, it will be more difficult in the future to address environmental and water quality concerns.

Second, committing a significant portion of California's water to long-term subsidized rate contracts hinders the emergence of market-based water transactions in California. The Department of the Interior has endorsed water marketing as an environmentally and fiscally responsible approach to addressing water supply issues throughout the country.<sup>5</sup> To operate efficiently, water markets require prices that reflect the underlying value of the resource. Continuing subsidized water deliveries on this scale discourages conservation and business-based decisions to redirect supplies through water market transfers.

We urge Reclamation to reconsider the contract quantities and pricing structure as it moves towards finalizing its long-term contracts. At a minimum, Reclamation should assure that the contracts include provisions to: (1) assure that CVP users pay the full cost for water generated by CALFED water supply enhancement projects, and (2) encourage the participation of CVP contractors in the emerging water market.

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<sup>5</sup> Department of the Interior, Bureau of Reclamation, Water 2025.